UNITED
NATIONS

AT

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 660

Case No. 702: AL-ATRAQCHI

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, First Vice-President, presiding; Mr. Luis de Posadas Montero, Second Vice-President; Mr. Mikuin Leliel Balanda;

Whereas at the request of Mohammed Ali Al-Atraqchi, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended to 28 October 1992 the time-limit for the filing of an application to the Tribunal;

Whereas, on 28 October 1992, the Applicant filed an application requesting the Tribunal, inter alia:

"...to find that:

(a) The JAB [Joint Appeals Board] Panel has failed to investigate the issues involved in this case;

(b) It was well known inside the former DIESA [Department of International Economic and Social Affairs] (...) that this post [Chief, Office of the Under-Secretary-General] was earmarked for [another staff member] a protégé of ..., the former Under-Secretary-General for Administration and Management...

(c) He was not properly considered for the post in question. ... and, consequently, to award the Applicant one year's net salary in compensation."

Whereas the Respondent filed his answer on 16 December 1992;

Whereas the Applicant filed written observations on 19 February 1993;

Whereas, on 22 June 1994, the Tribunal requested the Respondent to provide the Tribunal with certain documents, which he did on 29 June 1994;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 7 October 1967, under a probationary appointment at the P-2 level, as an Associate Statistician, with the Statistical Office of the Department of Economic and Social Affairs. On 1 October 1969, his appointment was converted to a permanent appointment, and on 1 June 1970, he was promoted to the P-3 level as a Statistician. On 1 September 1973, the Applicant was transferred to the Council and Committee Services Section, Security Council and Political Committees Division, Department of Political and Security Council Affairs, as an Economic Affairs Officer. On 1 April 1974, he was promoted to the P-4 level and on 1 July 1979, to the P-5 level as a Senior Political Affairs Officer. The Applicant separated from the service of the United Nations on 31 July 1993, having reached the mandatory retirement age.

The Administration announced, in Internal Vacancy Announcement 91-E-ESA-249-NY, the vacancy of the D-1 post of Chief, Office of the Under-Secretary-General in the Department of International Economic and Social Affairs (DIESA), with a deadline for applications of 8 April 1991. The post was advertised internally, within the Secretariat. Staff members at the D-1 or P-5 level were eligible to apply. The Applicant and other staff members applied. The selection was conducted under the Vacancy Management and Staff Redeployment System (VMS), established according to the

Secretary-General's Bulletin ST/SGB/221 of 22 December 1986 and administrative instruction ST/AI/338 of the same date, and its addenda, then in force.

On 12 July 1991, a Recruitment and Placement Officer at the Office of Human Resources Management (OHRM) informed the Applicant that his name had not been included in the short-list of candidates selected by the Appointment and Promotion Board (APB).

On 22 July 1991, the Applicant instituted a recourse procedure before the APB, asking the Board to consider him for promotion to the D-1 level and transmitting information concerning his experience and qualifications, which at the time of the APB's deliberations might not have been available to it.

In a communication dated 2 October 1991, the Secretary of the APB informed the Applicant that his recourse had been rejected and that his name "was not included in the final short-list" of candidates selected by the Board.

On 25 October 1991, the Applicant requested the Secretary-General to review the administrative decision not to appoint him to the post of Chief, Office of the Under-Secretary-General, DIESA.

On 24 December 1991, having received no reply from the Secretary-General, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB adopted its report on 5 June 1992. Its conclusions and recommendation read as follows:

> "Conclusions and Recommendation
>
> 22. The Panel concluded that the candidature of the Appellant to the post in question was given full consideration.
>
> 23. The Panel also concluded that the decision not to select the Appellant for the post in question did not violate his rights, including his right to due process.

24. Accordingly, the Panel makes no recommendation in support of the appeal."

On 10 June 1992, the Assistant Secretary-General, OHRM, transmitted to the Applicant a copy of the JAB report and informed him as follows:

"The Secretary-General has re-examined your case in the light of the Board's report. He agrees with the Board's conclusions that your candidature to the post in question was given full consideration and that the decision not to select you for the post did not violate your rights including your right to due process. The Secretary-General has, therefore, decided to take no further action on your case."

On 28 October 1992, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The post for which the Applicant applied was earmarked for another staff member.

2. The JAB did not carry out a fair and objective review of the appeal, as required by staff rule 111.2(m).

Whereas the Respondent's principal contentions are:

1. The Applicant has no right to promotion, only a right to be considered for promotion.

2. The Applicant was properly considered by the appointment and promotion bodies. As they did not short-list him among the final candidates, he became ineligible for selection under the VMS then in force. This discretionary action of the appointment and promotion bodies did not violate the Applicant's rights.

3. The Applicant's allegation that the selection process was vitiated by extraneous factors is not supported by evidence.

The Tribunal, having deliberated from 22 June to 22 July 1994, now pronounces the following judgement:

I. The Applicant claims that he was not properly considered for the post of Chief, Office of the Under-Secretary-General in the Department of International Economic and Social Affairs. He contends that, before the selection process took place, the post in question was already earmarked for the staff member who was finally selected. The selection process was conducted following the Vacancy Management and Staff Redeployment System, then in force.

The Respondent maintains that the Applicant was duly considered, that no extraneous factor vitiated the contested decision, and that staff members have no right to promotion.

II. The Tribunal notes that:

(a) The evidence shows that the Applicant was duly considered for the post.

(b) Staff members have no right to be promoted. They are only entitled to be duly considered for promotion. In Judgement No. 447, Abbas (1989), the Tribunal held that "the burden of proof of having given consideration is on the Respondent whenever a staff member questions that such consideration was given". In the Tribunal's view, the evidence before it shows that the Respondent has satisfactorily discharged this burden. The evidence is that the Applicant was duly considered by the Appointment and Promotion Board and was found not to warrant inclusion in the short list submitted to the Department.

(c) The Applicant has submitted no evidence to substantiate that extraneous factors influenced the challenged decision and that the appointment of the successful candidate was already decided upon before the selection process was set in motion.

III. For the foregoing reasons, the Tribunal rejects the application.

(Signatures)

Jerome ACKERMAN
First Vice-President, presiding

Luis de POSADAS MONTERO
Second Vice-President

Mikuin Leliel BALANDA
Member

Geneva, 22 July 1994

R. María VICIEN MILBURN
Executive Secretary